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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,120	06/30/2006	Martin Hogan	ALL-1005US	1288
21302 7590 12/17/2007 KNOBLE, YOSHIDA & DUNLEAVY EIGHT PENN CENTER SUITE 1350, 1628 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19103			EXAMINER MAI, HUY KIM	
			ART UNIT 2873	PAPER NUMBER
			MAIL DATE 12/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/550,120

Applicant(s)

HOGAN, MARTIN

Examiner

Huy K. Mai

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1,5,6,22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4,19-21 and 24 is/are rejected.
- 7) ☒ Claim(s) 7-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Species B, claims 7-18 in the reply filed on Oct. 25, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant withdraws claims 1, 5, 6 and 22-23

Accordingly, claims 2-4, 7-21 and 24 will be examined in this action as follows:

(NOTE: All claims 2-4, 7-21 and 24 are dependent claims. The applicant should present at least one independent claim.)

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA, 35 U.S.C. 102(e)).

3. Claims 2-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Park (6,702,440).

Claim 2 is dependent upon and includes all the limitation of claim 1. The limitations in claims 2-4 are shown in Park's Figs. 1-12, columns 3-5. Park discloses a modular eyewear system including magnetic mounting means A for releasable magnetic mounting of one or more eyewear elements (8, 14) and mechanical mounting means (16, 54) allows the location of the eyewear element to be adjusted. The mechanical mounting means is a recess 54 and a locating pin of the bridge 52 of the auxiliary lenses 14 (see column 4, lines 53-62).

4. Claim 19 is rejected under 35 U.S.C. 102(a) as being anticipated by Huang (2002/0140897).

The limitations in claim 19 can read over the Huang's Fig. 5, page 2, column 1. Huang discloses a modular eyewear system including magnetic mounting means (1262', 1442') wherein the nose support 144' is releasably mountable to an eyewear element 12' by way of magnetic mounting means (1262', 1442').

5. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Mauch (6,170,949).

Claim 24 is dependent upon and includes all the limitation of claim 1. The limitations in claim 24 are shown in Mauch's Fig. 1-9, columns 4-5. Mauch discloses a modular eyewear system including magnetic mounting means for releasable mounting of one or more eyewear elements wherein the magnetic mounting means comprising a magnetic projection 131 and a cooperating magnetic recess 230.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang in view of Negishi (6,056,398).

Huang discloses a modular eyewear system including magnetic mounting means (1262', 1442') wherein the nose support 144' is releasably mountable to an eyewear element 12' by way of magnetic mounting means (1262', 1442'), but does not disclose the nose support is mountable to the eyewear element in a plurality of positions, in order to adjust the vertical position of the eyewear element on the wearer's head. It is commonly known in the art that a nose support mountable to the eyewear in a plurality positions in order to adjust the vertical position of the eyewear element on the wearer's head, as taught by Negishi, for example. It would have been obvious at the time the invention was made to those having ordinary skill in the art to modify the Huang's device by forming the nose support mountable the eyewear element in a plurality of positions, as common knowledge in the art for the same purpose of adjusting the vertical position of the eyewear element on the wearer's head.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mauch.

Mauch discloses a modular eyewear system including magnetic mounting means for releasable magnetic mounting of one or more eyewear elements, but does not disclose the arms being biased towards one another and curved to wrap around the wearer's head to exert pressure

on the rear' of the head, thereby urging the eyewear elements toward the wearer's face, as claimed. It was commonly known to those ordinary skill in the art that a pair of arms being biased towards one another' and curved to wrap around the wearer's head to exert pressure on the rear' of the head for the purpose of urging the eyewear elements toward the wearer's face. It would have been obvious at the time the invention was made to those having ordinary skill in the art to modify the Mauch's device by forming a pair of arms being biased towards one another and curved to wrap around the wearer's head to exert pressure on the rear' of the head, thereby urging the eyewear elements toward the wearer's face as a common knowledge for the purpose recognized in the art of Mauch, as discussed above.

*Allowable Subject Matter*

9. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claims 8-18 are objected to as dependent upon the above objected claim.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

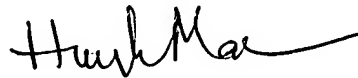
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read "Huy Mai", with a long horizontal flourish extending to the right.

Huy Mai  
Primary Examiner  
Art Unit 2873

HKM/  
December 12, 2007